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10/608,106	06/30/2003	Christopher P. Foley	86769-0010	1052

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EXAMINER	
OMOTOSHO, EMMANUEL	
ART UNIT	**PAPER NUMBER**
3714	

NOTIFICATION DATE	DELIVERY MODE
09/23/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/608,106	FOLEY ET AL.	
	Examiner	Art Unit	
	EMMANUEL OMOTOSHO	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 May 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,3-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papadopoulos (US 6,099,320) in view of Gupta et al. ("Gupta") US 2005/0192954 A1 and in further view of Griffor et al. ("Griffor") US 2002/0173999 A1, Cozens et al. ("Cozens") US 2002/0064766 A1 and Nourbakhsh et al. ("Nourbakhsh") US 2002/0143599 A1.

1. [Claims 1,3,15,18-21]: Regarding Claim 1, Papadopoulos teaches a content development platform, said content development platform containing electronic tools for receiving input relating to the compiling of instructional materials (i.e., audio, video, and textual content) (Col 2 lines 21-35) and generating electronic learning content (i.e., computer-based training modules). Papadopoulos teaches an electronic delivery platform (i.e., Virtual Training Center), said electronic delivery platform containing electronic tools for delivering instruction to the students, said delivered instruction incorporating said electronic learning content. See Col.2 lines 38-47, Col.8: 1-13.

2. Papadopoulos teaches a learning administration platform, said learning administration platform containing electronic tools (e.g., VIP directory) for storing said

electronic learning content, storing registrar information regarding said students and said instruction (e.g., courses that the student has completed), and storing catalog information (e.g., curriculum) regarding said learning content. See Col.5 lines 35-50, Col.8: 1-6. Papadopoulos teaches a resources synchronization platform (i.e., Virtual Training Center), said resources synchronization platform including a resources synchronization tool adapted to obtain and store data regarding compilation and generation functions as performed by said content development platform, data regarding delivery functions as performed by said delivery platform, said registrar information and said catalog information from said learning administration platform; wherein said resources synchronization tool provides an interface for accessing and processing said stored compilation data, generation data, delivery data, registrar information and catalog information upon request. See Col.5 lines 35-50, Col.8: 1-6.

3. Papadopoulos does not expressly teach said synchronization tool processing said accessible data and information into resource utilization reports on demand such that said reports may be utilized to make resource allocation decisions across said learning services providing entity.

However, generating resource utilization reports from accessible data and information on demand is old and well known in the art.

Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into Papadopoulos' invention in order to make efficient use of resources.

4. In regards to claim 8, Papadopoulos teaches organizing allocation and scheduling information into sortable scheduling and usage reports (Col. 7 lines 34-40).

5. In regards to claim 9, Papadopoulos teaches reports may support learning solution processes selected from the group consisting of forecasting budgeting, performance planning, performance reporting, account management, production management, media configuration, delivery coordination, and needs analysis (Col 7 lines 60-67).

6. In regards to claims 10,17,26, Papadopoulos teaches the learning solution is able to be outsourced from a learner organization (School/business entity) to said learning services providing entity (Administrators) according to a learning services agreement (the curriculum), said agreement detailing minimum service levels that must be met by said providing entity (inherent in the curriculum) (Col.7 lines 28-67)

Papadopoulos does not expressly teach electronic delivery platform is adapted to record performance metrics during delivery of said instruction, during compilation of instructional materials and during generation of electronic learning content and wherein said performance metrics measure aspects of said compilation, said generation, and said delivery.

However in a similar network system learning solution invention, Gupta teaches a delivery system capable of recording performance metrics (Par. 0018), the use of a database to store such information (Fig 3, Fig 4 Par. 0129), presenting the information to the teacher/supervisor (Par. 0129) wherein Gupta teaches a form of presentation to

be of a report format (Par. 0013) (Claims 1-4,15-16,18-21,25). The following interpretations are being made:

- Compilation of instructional materials – the compilation of the materials that is inherently done before generating the specific materials that would be delivered to the user
- Generation of the learning content – the generation of the specific materials that would be delivered to the user
- Delivering instruction materials – delivering the instructional materials to the user

7. In regards to claim 6, said performance metrics data is accessible (through the database Par. 0129) by resources synchronization tool in substantially real time.

8. Papadopoulos does not expressly teach content development platform is adapted to record performance metrics. Papadopoulos also fails to teach that the platform is adapted to record performance metrics during the authoring of instructional materials and generation of electronic learning content by course authors. The word "authoring" is interpreted as the user designing and developing course materials for the students. Thus, as shown above, Gupta teaches a system that record performance metrics. As also shown above, Papadopoulos teaches that the solution incorporates processes selected from the group consisting of forecasting budgeting, performance planning, performance reporting, account management, production management, media configuration, delivery coordination, and needs analysis. The course offered and the materials required for the courses are all part of the budget and accounting processes.

9. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to have the content development platform record performance metrics defined according to the organizations business goals and strategies during the authoring of instructional materials and generation of electronic learning content by course authors. The motivation comes from the above cited Gupta and Papadopoulos references and also from Griffor Par. 0015 where it states that *By focusing all resource allocation and development on achieving the organizational goals of the organization, it provides aligned metrics for measuring the difference between the competencies required by the organization's strategic plans and the skill based resources available in its participants.*

10. In regards to claims 7, 23-34, Gupta teaches an electronic interface for allocating the utilization of constrained learning resources subject to relevant instructor and student availabilities (Par. 0090, 0091, 00130, 0134)

11. Papadopoulos as modified by Gupta did not specifically teach the performance metrics defined according to the identified business goals and strategies of the organization as disclose in claims 11 and 27. However, defining the performance goals according to the organization's goals and strategies is inherent and well known in the art. After all, it is with the organization's goals and strategies in mind that the metrics are developed in the first place. Nonetheless, if the applicant wishes to contend that this is well known in the art, the applicant should respectfully note the Griffor reference that shows this feature to be old in the art (Griffor Par. 0015).

12. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to include performance metrics defined according to the organizations business goals and strategies. The motivation comes from Griffor Par. 0015 where it states that *By focusing all resource allocation and development on achieving the organizational goals of the organization, it provides aligned metrics for measuring the difference between the competencies required by the organization's strategic plans and the skill based resources available in its participants.*

13. In regards to claims 5,12,22 and 28, Papadopoulos as modified by Gupta did not specifically show a development ratio in light of costs and man-hours/elapsed time. However, Nourbakhsh shows this feature to be old in the art (Nourbakhsh Par. 0045).

14. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to include Nourbakhsh developmental ratio (which is in light of expended costs and man-hours/elapsed time) for budget planning and revision.

15. The motivation comes from Nourbakhsh Par 0045 where it states *the budget computation allows changes to the budget model mid-year in a single plan.*

16. In regards to claim 13-14,29-30, although they disclose recording the learning cost, Papadopoulos as modified by Gupta did not specifically teach learning costs allocated and billed to appropriate business units. However, Cozens shows this feature to be old in the art (Abstract, Par. 0197).

17. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to include learning costs allocated and

billed to appropriate business units. The motivation comes from Cozens Abstract where it states that the invention *presents a global solution for large companies to manage a global employee-training program by providing a centralized database, automated fault-tolerant notification, and flexible HTML-based user interfaces.*

18. In regards to claims 14 and 30 applicant should respectfully note that establishing a cost schedule in which tasks performed are broken down by charges is inherent in providing a learning system cost. For this is how cost are calculated, as in the total charges for each work done is tallied up and total cost is calculated.

Response to Arguments

19. Applicant's arguments filed 05/27/09 have been considered but they are not persuasive.

20. On page 3, applicant argues, "The Office relies on Gupta for "teaching recording performance metrics." (Office Action at ¶ 31). Applicant admits that Gupta does describe recording performance metrics. However, as detailed in Applicant's previous response, the performance metrics of Gupta are recorded entirely during delivery of content. Gupta states, while discussing "delivering adaptive content," that "[v]arious performance metrics are recorded during user interaction." (Gupta ¶ 18) (emphasis added)• As a result, the Office itself notes that "Gupta teaches a delivery system capable of recording performance metrics." (Office Action ¶ 6) (emphasis added). Thus, Gupta does not teach "a content development platform •.. adapted to record performance metrics during authoring of instructional materials and generation of

electronic learning content by course authors," (emphasis added) as recited in claims 1 and 15."

21. Gupta was not relied upon for the teaching of a content development platform adapted to record performance metrics during authoring of instructional materials and generation of electronic learning content by course authors. Please see par 6-9 above.

22. On page 4, applicant argues, "As an initial matter, even assuming the Office's characterization of Papadopoulos is correct, which Applicant does not concede, Papadopoulos fails to cure the deficiencies of Gupta discussed above. The Office's recitation of "course offered (i.e. the already authored contents) and the materials required for the courses" as part of a budgeting process cannot constitute "record[ing] performance metrics during authoring of instructional materials," (emphasis added) as required by the claims. It is clear that any budgeting based on these would relate to already authored (i.e. authored in the past) courses."

23. Please see par 8 above that clearly states the office action's interpretation of the broadly claimed 'authoring' limitation.

24. On page 4, applicant argues, "Furthermore, examination of the portion of Papadopoulos that the Office characterizes as teaching "budget and accounting processes" shows that Papadopoulos teaches away from claims 1 and 15. Papadopoulos makes clear that these "processes" relate solely to activity during delivery of content, stating that "[s]tatistical information and graphs on the number of courses available over time, the average amount of time required to complete a course, the actual number of students taking and completing courses and other useful statistics

are generated automatically from the student records." (Papadopoulos Col. 7, lines 60-65) (emphases added)."

25. The examiner is unclear how col 7:60-65 of Papadopoulos teaches away from claim 1 and 15. Col 7:60-65 states, "statistical information and graphs on the number of courses available over time, the average amount of time required to complete a course, the actual number of students taking and completing courses and other useful statistics are generated automatically from the student records." Exactly how is this section teaching away from claim 1 and 15? Applicant should respectfully note that any reply to the office must be reduced to a writing which **distinctly and specifically** points out the supposed errors in the office action. See 37 CFR 1.111b.

26. On page 5, applicant argues, "The Office also asserts that claims 10, 17, and 26 are unpatentable over Papadopoulos in view of Gupta. These claims recite that a learning solution "is outsourced from a learner organization to said learning services providing entity according to a learning services agreement, said agreement detailing minimum service levels." Papadopoulos, which is relied on by the Office for this claim element, makes absolutely no mention of "outsourcing" whatsoever. The Office's discussion of this claim element contains nothing more than conclusory statements, attempting to analogize the claims to the references without analysis or support."

27. The examiner respectfully disagrees. Par 6 above is not mere conclusory statements since it specifically cites the sections in Papadopoulos which teaches the outsourcing limitation.

Conclusion

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMMANUEL OMOTOSHO whose telephone number is (571)272-3106. The examiner can normally be reached on m-f 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EO

/Ronald Laneau/
Primary Examiner, Art Unit 3714
09/11/09